

# Drafting Contracts and Waivers

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## Mandatory Attorney Disclaimer

- The sample documents provided for this presentation are for discussion purposes only. They should not be used in any official capacity without the review and approval of your county attorney.

## Waivers: Be Realistic

- Waiver cannot remove all liability
- Only takes a clever lawyer to get around
- Minor's waivers may not be effective
- But get them anyway

## We Want Waivers

- They are good defenses
- Your job is to protect the county
- We have the best defense attorneys
- They need all the help we can give them

## Waiver Language

- Semantics is important in waivers
- Indemnify = reimburse
- Hold Harmless = pay on behalf of
- HH: We want them to pay and defend us
- Also release, waive and assume risks

## Hold Harmless Language

- Defend and indemnify
- Costs paid as incurred
- Full extent permitted by law
- Any and all claim, suits, etc.
- Covers acts and omissions
- Only exception is our negligence or intentional acts

## Mutual Indemnification

- Avoid if possible, but difficult for government
- If necessary, make them equal
- Both parties liable for and indemnify own acts
- Careful of “sole negligence” limitation clause

## Elements of Waiver

- Consideration: what are they getting
- Compliance: must agree to obey rules
- Explain and assume risk
- Release and waive rights
- Hold Harmless clause
- Agree to pay for damages to our property
- Acknowledgement and signature

## Contract Basics

- Not a do-it-yourself project
- Get legal assistance
- But not an exercise in legalese
- Essentially the terms you agreed to

## Contract Construction

- Determine what you are trying to do
- Follow a form to address all issues
- Be clear
- Circulate to all parties to get readers' comments
- Get legal review

## Contract Provisions

- Parties
- Purpose
- Each party's responsibilities
- Special terms
- Attachments
- Signature blocks

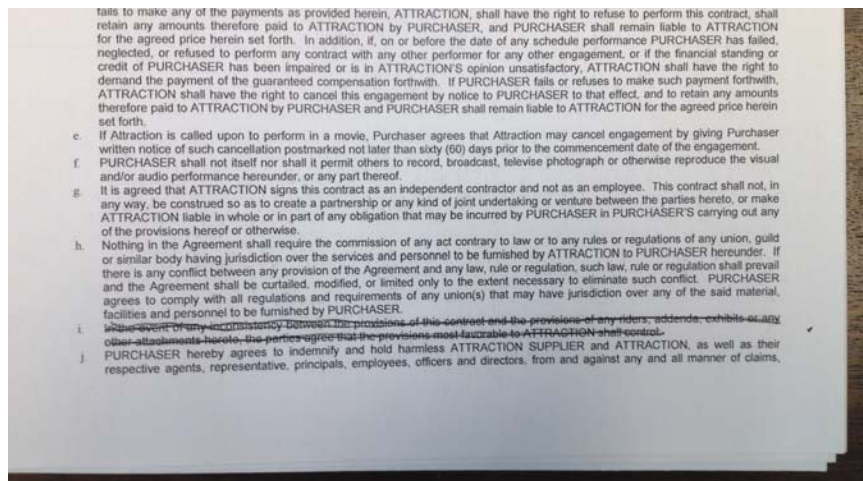
## Legal Mumbo Jumbo

- More than can be explained in an hour
- All important
- Boilerplate clauses
- This part is for attorneys

## Contract Traps

- State jurisdiction
- Venue
- State law
- Indemnification
- Damage limitation
- Wrong party

## Contract 1



## Contract 2

18) **Weather:** Performers reserve the right to refuse to perform outdoor engagements when, in Performers' judgment, weather conditions would be detrimental to instruments or musicians. Buyer is responsible for reserving a suitable indoor location as an alternative to poor weather conditions. If Buyer does not reserve an alternative site, Buyer covenants and agrees that full contract price shall be paid to Performers even if weather conditions prevent performance.

19) **Insurance:** Buyer and venue warrant and represent that they have, or shall obtain, sufficient personal injury and property damage liability insurance with respect to Buyer's liabilities that may arise from the Event. Green Light Booking LLC and Performers are indemnified against all claims that may arise from this event, *with the exception of claims arising from the negligence or misconduct of Green Light Booking LLC or Performers.*

20) **Taxes:** Buyer is responsible for reimbursing Performers for any unanticipated taxes charged by state or venue. Performers and Green Light Booking LLC are engaged as an independent partnership and shall assume and pay, and hold Buyer harmless therefrom, any and all anticipated taxes, including, but not limited to, Utah income tax withholding, FICA withholding, workers compensation withholding and federal and state unemployment insurance, and will comply with all reporting requirements in connection therewith.

## Contract 3

16) **Weather:** Performers' obligations are excused if roads are declared impassable or if other weather-related issues render performance hazardous. Buyer remains liable to Performers for full contract price, so an alternate venue is strongly suggested if weather could potentially render the venue, or travel to it, hazardous. Performers who will play outside must be protected from sun and heat, wind, rain, cold, and other elements that would damage their health, safety, comfort, and instruments.

17) **Insurance:** Buyer and venue warrant and represent that they have, or shall obtain, sufficient personal injury and property damage liability insurance with respect to Buyer's liabilities that may arise from the Event. Green Light Booking LLC and Performers are indemnified against all claims that may arise from this event, *excluding negligent or intentional acts of Green Light Booking LLC and Performers.*

18) **Taxes:** Performers and Green Light Booking LLC are engaged as an independent partnership and shall assume and pay, and hold Buyer harmless therefrom, any and all taxes, including, but not limited to, income tax withholding, FICA withholding, workers compensation withholding and federal and state unemployment insurance, and will comply with all reporting requirements in connection therewith.

19) **General:** This agreement will be governed and construed in accordance with the laws of the State of Utah. This agreement constitutes the entire agreement between the Parties.



## Contract 4

- The deposit is required to reserve the date of performance (4. above). Until the deposit is received, the Performers may cancel this contract without liability. In the event that Employer, for any reason, cancels this performance, the deposit will be forfeit.
13. Employer will make payment in full (contract price less deposit) delivered to the Performers on the date of performance (4. above). If payment is late, ten percent will be added to the contract price.
  14. The Performers are entitled to a maximum of 10 minutes per hour for breaks.
  15. Employer is responsible to ensure that no unauthorized persons are allowed access to the stage area before, during, and after the performance. If any unauthorized person enters the stage area, the performance will immediately stop until such time as the stage has been cleared. Unless specified in the terms of this contract (10. above), the Performers will not allow anyone to use their equipment nor to perform on stage, neither during sets nor during breaks.
  16. Employer is liable for damage to band equipment caused by ~~any person other than the Performers~~ *Employer's agents, employees or representatives*.
  - 17. Employer is responsible to provide at least 30 amps (60 amps preferred) of properly wired, grounded, stable, clean, "110 volt" (actual 110V minimum to 125V maximum), 60hz AC power, within 100 feet of the center of the stage. If any power source other than utility-provided 110V is used, Employer is liable for any and all equipment damage caused by voltage variations outside of these specifications.
  18. Employer is responsible to provide a stage or space adequate for the Performers and their equipment. (NOTE: 24 x 18 feet or larger is preferred; 18 x 12 feet minimum.)
  - 20. If performance is indoors or after sunset, Employer is responsible to provide adequate stage lighting. (Lights must be run off a power source separate from that specified in 17. above).
  21. If performance is indoors, no smoking will be allowed in the building before, during, or after the performance. If performance is outdoors, no smoking will be allowed within 20 feet of the stage.
  22. The performers will supply a PA system and sound technician. The PA may be used by Employer for announcements and/or background music during breaks (advance notice required).

## Contract 5

- [Signature]* part by the negligence of the COUNTY's officers, agents, volunteers, or employees, but not for claims arising from the STATE's ~~sole~~ *negligence* *[Signature]*
- NOW THEREFORE, it is agreed by and between the parties hereto as follows:
1. Either party, in writing may terminate this Cooperative Agreement in whole, or in part, by providing 30 days written notice to the other party before the date of expiration. Neither party shall incur any new obligations for the terminated portion of the Cooperative Agreement after the effective date and shall cancel as many obligations as possible. Full credit shall be allowed for each party's expenses and all non-cancelable obligations properly incurred up to the effective date of termination.
  2. This Cooperative Agreement is executed as of the date of last signature, and, unless sooner

## Contract 6

|          |      |        |      |          |      |
|----------|------|--------|------|----------|------|
| February | 2015 | June   | 2015 | October  | 2015 |
| March    | 2015 | July   | 2015 | November | 2015 |
| April    | 2015 | August | 2015 | December | 2015 |

Agreement:

2 col. (4-5/8") x 6-1/2" advertisement in 4-color in Resorts and Destinations in print and hyperlinked online in the digital edition at [www.rvlife.com](http://www.rvlife.com) at \$465 per insertion for 12 insertions - \$5,580 less 30% discount for prepayment upon presentation of invoice - \$3,906. Also includes a complimentary 4-line listing in the RV Life yellow pages in print and hyperlinked online in the digital edition and at [www.rvlife.com](http://www.rvlife.com) under "Tourism" - a \$60 added value per month.

Advertiser agrees to indemnify and to protect the publisher from any claims or actions based upon the unauthorized use of any person's name or photograph, or any sketch, map, words, labels, trademarks, or otherwise copyrighted matter, or based upon libelous statements, in connection with advertising. <sup>content submitted by Advertiser.</sup> ~~Publisher's direct or indirect liability to advertiser shall not exceed the invoiced cost of the advertisement.~~

The parties agree all advertising copy is subject to acceptance of the publisher of *RV Life Magazine*. In the event of non-payment, publisher reserves the right to hold advertiser liable for such invoices as are due and payable to publisher.

No cancellations accepted after ad deadline. When new copy or copy changes are not received by the ad deadline, the publisher reserves the right to run the most recent insertion. Written space cancellations are accepted prior to ad deadline only.

Terms of payment: Invoice is due upon receipt.

## Contract 7

CONFIDENTIAL

PERMITTED BY APPLICABLE LAW, ON BEHALF OF ITS AFFILIATES) WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED UPON CONTRACT, TORT OR OTHERWISE) RELATED TO OR ARISING OUT OF THE ENGAGEMENT OF BMOCM PURSUANT TO, OR THE PERFORMANCE BY BMOCM OF THE SERVICES CONTEMPLATED BY THIS LETTER AGREEMENT. The invalidity or unenforceability of any provision of this letter agreement shall not affect the validity or enforceability of any other provision of this letter agreement, which shall remain in full force and effect pursuant to the terms hereof. <sup>This Agreement is Subject to the attached copy of Sevier County Standard Terms and Conditions.</sup>

We are pleased to proceed with these engagements and look forward to working with the County. If the foregoing is in accordance with your understanding, please indicate your agreement to the above terms and conditions by signing the enclosed copy of this letter agreement and returning it to us.

Yours very truly,

BMO CAPITAL MARKETS GKST INC.